

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

F.A.O No.1718 OF 2006
Date of Decision: May 14, 2007

UNITED INDIA INSURANCE CO.

.....APPELLANT

VERSUS

KAVITA AND OTHERS

.....RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE A.N.JINDAL

PRESENT: - Mr. R.C.Gupta, Advocate for
Pardeep Bedi, Advocate for the
appellant.
Mr. Tara Chand Dhanwal, Advocate
for respondent No.1.
Mr.Rajesh Sheoran, Advocate for
respondent No.2 & 3.

A.N.JINDAL, J

On notice of the petition, the respondents
have put in appearance.

This is an appeal preferred by United India
Insurance Co. Ltd. (hereinafter referred as, 'the
appellant') challenging the award dated 16.01.2006 passed
by Motor Accidents Claim Tribunal(Fast Track Court) Bhiwani
vide which the claimants were awarded compensation in the
following manner:-

Claim petition No.47 of 2005 Khazani vs.
Bhagat Singh

Dismissed with no order as to costs.

The claim petition No.48 of 2005 titled as
"KAVITA VERSUS BHAGAT SINGH ETC."

Allowed partly in the manner that petitioners are entitled to get compensation amounting to Rs.1,56,000/- (Rupees one lakh and fifty six thousands only alongwith interest at the rate of 6% P.A) was awarded to the claimants.

However, the respondent No.1 Bhagat Singh being the owner and respondent No.2 being the insurer of the offending vehicle bearing HR23A/4229 were held jointly are severally liable to pay the above said compensation to the petitioner Kavita. It was further directed that the first charge shall remain against respondent No. 2 (insurer) and the respondent No. 3 shall not be liable to pay any compensation and petitions qua him were dismissed."

The factual matrix of the case is that on 19.10.1999 petitioners claimants (hereinafter referred to as the 'claimants') Khazani and Kavita alongwith Rajbir, Mahender and Balwan etc. had gone to Gurgaon from their village Serla in Mahindra Utility Jeep bearing No.HR-23 A/A4229 owned by respondent No.1 and driven by Sajjan alias Sat Narayan. On 20.09.1999 at 8.A.M they left from village Serla in the said vehicle. At about 10 A.M when they reached near village M.P Majra near village Jahajgarh, then Sajjan alias Sat Narayan while driving the vehicle rashly and negligently struck it against the 'kikar' tree. Resultantly, the driver died at the spot whereas the

claimants and other persons suffered injuries. Consequently, on filing of two different claim petitions, the claim petition filed by Khazani petitioner was dismissed and in the other claim petition filed by Kavita claimants were awarded compensation in the aforesaid terms vide order dated 16.01.2006. Hence this appeal by United India Insurance Co. Ltd. The appellant company urged that since the offending vehicle was not meant for carrying passengers and Sajjan (deceased) driver of the offending vehicle was not authorised to drive Mahindra Jeep, therefore, Company was not liable to pay the compensation.

Having examined the matter at length, I observe that the contentions raised by the Insurance Company are not tenable though Bimla widow of Sajjan filed an application under the Workmen's Compensation Act. Smt. Sarla Devi had made a statement that there were 10 or 12 persons in the offending vehicle and Sajjan used to carry passengers but she stated that no amount was charged from her or from other passengers. As such the aforesaid statement is of no consequence to help the case of the company and to draw the inference that jeep was plied as a taxi. As a matter of fact, Insurance Company was required to produce some witness before the Tribunal to prove the fact that the said jeep was being plied as a taxi. The report of the survey also cannot be taken into consideration as they are presumed to speak in favour of the company as they are paid by them. The vehicle in question is a utility vehicle and was meant for carrying passengers as well. The certificate is mark A issued by Registering Authority Tohana also reveals that the vehicle in question could carry five passengers. In these circumstances, the owners cannot be said to have

contravened the terms and conditions of the Insurance Contract. As regards the driving licence, it is specifically mentioned that Sajjan was authorised to drive Jeep also. The counsel for the appellants has tried to take shelter of the judgment delivered by the Apex Court in case National Insurance Company Ltd. vs. Kusum Rai & others, 2006 ACJ 1336.

Having gone through the aforesaid judgment, It is observed that the same is not applicable to the fact situation of the present case. In that case, the driver had a licence to drive light motor vehicle but he was driving a jeep which was being plied as a taxi, therefore, in that situation it was held that there was violation of the terms of the Insurance Contract, but here in this case, the driver was authorised to drive the jeep itself and the licence does not distinguish between jeep and taxi. As such in these circumstances, no infringement or breach of the terms and conditions of the Insurance Contract could be inferred.

No other point has been urged in order to assail the impugned judgment.

For the foregoing reasons, the appeal being devoid of merit is hereby dismissed.

May 14, 2007
Ruchika

(A.N.JINDAL)
JUDGE